

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:19-cv-00615

Roderick Damon Rose,
Plaintiff,

v.

Athens Police Department et al.,
Defendants.

ORDER

Plaintiff Roderick Damon Rose, a former inmate of Henderson County Justice Center proceeding pro se, filed this civil rights lawsuit against the Athens Police Department, Officer Passons, and the Henderson County Justice Center. Doc. 1. This case was referred United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. Doc. 2.

On June 23, 2020, defendants Athens Police Department and Officer Passons filed a motion to dismiss this case for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Doc. 24. Two days later, defendant Henderson County Justice Center also filed a motion to dismiss under Rule 12(b)(6). Doc. 25. The magistrate judge recommended in two separate reports that defendants' motions should be granted, and that the lawsuit be dismissed with prejudice for failure to state a claim upon which relief may be granted. Docs. 36, 37. Plaintiff received a copy of these reports on December 17, 2020, but he has not filed any objections.

Instead, he filed a motion for leave to file a second amended complaint. Doc. 40. In the second amended complaint, plaintiff states he mistakenly sued Officer Passons instead of Officer Sharp, who is allegedly responsible for plaintiff's injuries. *Id.* However, the proposed second amended complaint simply asserts in a conclusory manner that Officer Sharp injured plaintiff intentionally. *Id.* at 1. As the magistrate

judge explained, such conclusory allegations are insufficient to state a claim upon which relief may be granted. Because the proposed second amended complaint fails to state a claim, it may be denied as futile. *Villareal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 766 (5th Cir. 2016).

When there have been no timely objections to a magistrate judge's report and recommendation, the record is only reviewed for clear error. *Douglass v. United Servs. Auto. Ass'n.*, 79 F.3d 1415, 1420 (5th Cir. 1996). Having reviewed the magistrate judge's reports, and being satisfied that they contain no clear error, the court **accepts** their findings and recommendations. The motions to dismiss filed by defendants Henderson County Justice Center and by the Athens Police Department and Officer Passons are **granted**. The above-styled civil action is **dismissed with prejudice** for failure to state a claim upon which relief may be granted. This dismissal is without prejudice, however, to any claims that plaintiff may have against Officer Sharp.

So ordered by the court on January 22, 2021.



J. CAMPBELL BARKER
United States District Judge